

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 303 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI MOHANBHAI KANAKHARA

Versus

ALARAKHA NOORMAHMAD

Appearance:

MR ANSHIN H DESAI for Petitioner
RULE SERVED for Respondent No. 1
MS LILU K BHAYA for Respondent No. 4
SERVED BY AFFIX.(N) for Respondent No. 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/05/2000

ORAL JUDGEMENT

The present petitioner is the owner of the tractor-trailor No.GHJ 9302-GTX 6646 involved in a motor accident occurred near the signboard of village Mota Thavaria on Jamnagar-Kalavad Road on 30.4.1995. It

appears from the record that the tractor of the petitioner was parked on the left hand side of the road on 30.4.1996. The bus driven by the second respondent was coming from the backside and had dashed against the backside of the tractor on the same road. Respondent No.1 was travelling in the aforesaid bus from Jamnagar to Kalavad. Due to the accident, respondent No.1 sustained injuries. He made application for compensation before the Motor Accident Claims Tribunal at Jamnagar which was registered as Claim Case No.122/96. The matter proceeded ahead and the tribunal came to the conclusion that there was negligence on the part of the petitioner and tractor driver and therefore, the award was passed in a sum of Rs.8,500/- with costs and interest against the driver of the tractor as well as against the petitioner. However, it was found that driver of the bus was not negligent and therefore, the tribunal was pleased to dismiss the said petition against the driver, owner and insurer of the said bus. Feeling aggrieved by the said judgment and award dated 10.4.1997, the petitioner has preferred this revision before this Court under Section 115 of the Code of Civil Procedure, 1908.

2. It has been mainly contended here that the tribunal has committed error in holding that the bus driver was not negligent and the tractor driver was negligent. Therefore, according to the petitioner the judgment and award of the tribunal are illegal and deserve to be set aside. The petitioner, therefore, prays that the aforesaid judgment and award of the tribunal be quashed and set aside.

3. It is an admitted fact that the tractor was parked on the left hand side of the road and it was dashed from its back by the bus came from behind.

4. The tribunal has observed in para 8 of the judgment that the first respondent has produced evidence of his own but it appears that he does not have much idea about how the accident took place. There is evidence of the driver of the tractor-respondent No.5 in this petition. He has stated that the tractor was parked on the left hand side of the road and it was dashed from its back by the bus which came from behind. It was also stated the back lights of the tractor were on. The tribunal did not believe the said aspect of the evidence of this witness. At the same time, the bus driver does not appear to have been examined and there is no material on record before the tribunal in this regard. Therefore, it cannot be said that the bus driver could not see the tractor parked on the left hand side of the road. Thus,

there is clear finding by the tribunal that the road was 20' wide at the place of accident leaving 3' kachcha road on both the sides of the tractor for the passage of the bus. It therefore, cannot be said that the road was totally blocked by the tractor and since there is no evidence that the bus driver could not spot the tractor parked on the left hand side of the road, it can also not be said that there was no negligence on the part of the bus driver.

5. It is true that on the highway, when a vehicle is parked on the road, the driver of the vehicle has a great deal of responsibility on his shoulder but at the same time, it has also become a routine to park vehicles on the road and, therefore, drivers driving vehicles at night hours should always be conscious with respect to the vehicles parked on the road. It is more so, when the vehicle has been parked on the correct side of the road. If at all the bus driver wanted to say that the bus driver could not look or spot the tractor parked on the left hand side of the road, it was open for him to enter the witness box and describe the position. That has not been done. It appears from the judgment and award of the tribunal that opponent No.3-Insurance Company has filed written statement Exh.31 and opponent No.4 being the driver of the tractor has filed written statement at Exh.22. Opponent No.6 has been deleted. It shows that the driver and owner of the bus do not appear to have filed written statement on their behalf. It appears from the judgment of the tribunal that an Advocate had appeared on behalf of the driver of the bus. Owner of the bus did not remain present. This shows that there was no defence put in by the driver and owner of the bus. So on the one hand no defence was put in by the driver and owner of the bus, on the other, driver and owner have not stepped in the witness box. Under the circumstance, the negligence in the matter cannot be solely attributed to the driver and owner of the tractor, since the bus driver has not stepped in the witness box. Since there is no explanation on record as to how the bus dashed against the stationary tractor, it has to be held that there was contributory negligence on the part of the bus driver also. However, it was night time, the tractor was parked on the tar road though there was kachcha road on the left hand side of the road and hence the negligence on the part of the tractor driver is also apparent. Therefore, so far as the first respondent is concerned, he is the claimant and therefore, petitioner and other respondents are joint tort feasons and consequently the responsibilities of the petitioner and other respondents have to be fixed jointly and severally. However, so far

as the inter-se responsibility is concerned, considering the facts and circumstances of the case, and in view of the fact that there were pleadings in the written statement of the driver of the tractor that the rear lights of the tractor were on, it would be reasonable to fix the liability between the tractor driver and bus driver to the extent of 50% each. Therefore, in view of the aforesaid facts and circumstances, I am of the view that this is a fit case wherein both the drivers have to share equal responsibilities.

6. Under the circumstances, the present Revision Application is required to be partly allowed since the tribunal has not considered the aforesaid aspect of the case. It is more so, when the bus driver did not file written statement and did not step in the witness box. This fact could have been properly appreciated by the tribunal which has not been done by the tribunal. Therefore, non-application of mind on that aspect has resulted in miscarriage of justice so far as the petitioner's claim is concerned.

7. In the aforesaid view of the matter, this petition is partly allowed. The judgment and award passed by the tribunal are modified and it is hereby directed that the present petitioner and respondents no.2,3 and 5 shall be jointly and severally responsible and liable to pay the amount of compensation fixed by the tribunal and their liability is fixed jointly and severally. So far as respondent No.4 is concerned, it seems that the fact that insurance has not been established and, therefore, the tribunal was right in dismissing the petition against the third respondent. Therefore, the present Revision stands dismissed against respondent No.4. So far as the remaining respondents are concerned, this Revision is allowed to the extent indicated above. Rule is made absolute accordingly. No order as to costs.

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msp.